

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 436 OF 2007

IN

SUIT NO. 422 OF 1987

The Peerless General Finance &  
Investment Co. Ltd..... ... Appellant.

Versus

Kanyahalal Laxmilal Jain & Anr. .... Respondents.

Mr. S.U.Kamdar i/by Mr. Ashwin Ankhad  
for the Appellant.  
Mr. Manoj Dalvi i/by M/s.Banatwala & Co.,  
for Respondent No.1.

**CORAM : SWATANTER KUMAR, C.J. &  
SMT.RANJANA DESAI, J.**

**DATED : 3RD JULY, 2007.**

**P.C.:**

This appeal is directed against the order dated 16th June, 2006 passed by the learned Single Judge of this Court in Suit No. 422 of 1987. By this order the suit was decreed as there was a default in filing of the written statement within the stipulated period.

2. It is not necessary for us to go into the detail

facts giving rise to this appeal keeping in view the statement made by the learned Counsel appearing for the parties. It is stated on behalf of the appellant that the entire amount deposited by the appellant be permitted to be withdrawn by respondent no.1 - decree holder, subject to furnishing of security. Further the appellant would also be willing to pay costs provided the appellant is granted an opportunity to file written statement and contest the suit on merits. Learned Counsel appearing for respondent no.1 submits that the request of the appellant be granted and he has no objection thereto.

3. In view of the joint statement made by the learned Counsel appearing for the parties, decree under appeal is set aside by consent of the parties. The appellant is granted four weeks time to file written statement before the Court trying the suit. Respondent no.1 herein would be at liberty to withdraw the decretal amount, stated to have been deposited by the appellant, subject to his furnishing security to the satisfaction of the Registrar / Prothonotary and Senior Master of this Court.

4. The appellant will pay costs in the sum of Rs.10,000/- to respondent no.1, being conditional to

the filing of the written statement.

5. Appeal is disposed of in the above consented terms.

Sd/-

**CHIEF JUSTICE**

Sd/-

**SMT.RANJANA DESAI, J.**